

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**



**PRO SE HANDBOOK**

**1999 - 2000  
Supplement**

Effective January 1, 1999, the Local Rules of Practice of the Northern District of New York were amended and restated and certain General Orders previously issued by the Northern District were abrogated. In light of these changes, the following supplement to the Pro Se Handbook has been prepared for use throughout 1999. Unless otherwise stated in this supplement, the information contained in the most recent Pro Se Handbook (dated 1997-98) is current and may be used by you.

For your assistance, L.R. 5.4(b) and L.R. 7.1 have been reprinted in full at the end of this Supplement.

**Page reference in 1997-98  
Pro Se Handbook**

**Revisions**

Table of Contents

p.1

General Order No. 49 was abrogated. The substance of this General Order is now contained in L.R. 5.4(b) (full text below), p. 5.

Chapter 1

p. 2

The Internet address for the Court's web page is [www.nynd.uscourts.gov](http://www.nynd.uscourts.gov).

Chapter 2

No changes.

Chapter 3

p. 1

Funding for Prisoners' Legal Services was not continued in the 1998-99 New York State budget. Therefore, you should not contact this agency in attempting to obtain counsel.

p. 6

Do not contact Prisoner's Legal Services for representation; see above.

Chapter 4

No changes.

## Chapter 5

- p. 3 General Order No. 49 was abrogated effective 1/1/99. The substance of this General Order is now contained in L.R. 5.4(b); full text below, p. 5).
- p. 6 General Order No. 49 was abrogated effective 1/1/99. See above.
- p. 8 Local Rule 26.2 eliminates the requirement that all discovery be filed with the Court in inmate-filed actions. A discovery motion pursuant to Fed.R.Civ.P. 37 must be accompanied by the discovery materials to which it relates. Discovery material to be used in support of a motion or at trial must be filed with the Court prior to the motion or trial. See L.R. 26.2.
- pp. 9-10 General Order No. 49 was abrogated effective 1/1/99. The substance of this General Order is now contained in L.R. 5.4(b) (full text below, p. 5).

## Chapter 6

No changes.

## Chapter 7

No changes.

## Chapter 8

- p. 1 In light of the significant revisions to L.R. 7.1, please refer to the full text of that Rule which is set forth below at pp. 7-14.
- p. 2 Delete reference to L.R. 7.1(c)(1). See L.R. 7.1(a)(2) for affidavit filing requirements.

## Chapter 8, cont.

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|----------|---|
| p. 2     | Delete reference to L.R. 7.1(c)(2). See L.R. 7.1(a)(1) for memorandum of law filing requirements.   |
| pp. 2-3  | Delete heading "Statement of Material Facts." Refer to revised section (4), below, p. 6, entitled " <b>Special requirements: Motions for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56.</b> " |
| pp. 4-10 | Reference should no longer be made to L.R. 7.1 as it appears in the 1997-98 Handbook. See full text of L.R. 7.1 below, pp. 7-14.  |

## Chapter 9

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| p. 2 | See L.R. 38.1 regarding requests for a jury trial. |
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**5.4 Civil Actions Filed In Forma Pauperis;** (Amended January 1, 1999)  
**Applications for Leave to Proceed In Forma Pauperis.**

(a) On receipt of a complaint or petition and an application to proceed in forma pauperis, and supporting documentation as required for prisoner litigants, the clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The complaint, application, and supporting documentation then shall be forwarded to the assigned magistrate judge for a determination of whether the applicant will be granted leave to proceed in forma pauperis and whether the complaint or petition shall be served by the marshal. Prior to service of process by the marshal pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915 to determine whether sua sponte dismissal is appropriate. The granting of an in forma pauperis application shall in no way relieve the party of the obligation to pay all other fees for which such party is responsible regarding such action, including, but not limited to, copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act (PLRA), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified in forma pauperis application; and  
(B) Submit the authorization form issued by the clerk's office.
2. (A) (i) If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").  
(ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner has failed to fully comply with the terms of such Order within such period of time, the action shall be dismissed.  
(B) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.
3. After being notified of the filing of the civil action, the agency having custody of the inmate shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning the action.

**(4) Special requirements: Motions for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56.**

Under the Federal Rules of Civil Procedure, a party may move for summary judgment on a claim, counterclaim, or cross-claim when that party believes there is no genuine issue of material fact requiring trial and that party is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and other materials outside the pleadings. See Fed. R. Civ. P. 56; Black's Law Dict., 5<sup>th</sup> ed., at 1287.

Rule 56(e) states that:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Thus, when a party seeking summary judgment (the "moving party") files a supporting affidavit, the party opposing summary judgment must respond by filing an affidavit, deposition, answer to interrogatories, or other documentary evidence in the form prescribed by Local Rule 7.1 (attached hereto at p. 7). These submissions should contradict the moving party's submissions so as to demonstrate that there are factual issues requiring a trial. See Fed. R. Civ. P. 56(e). Facts

asserted in the affidavit(s) of the moving party will be taken as true if not controverted by counter-affidavits or other documentary evidence. Similarly, under the local rules of the Northern District, a party seeking summary judgment must file a Statement of Material Facts setting forth each material fact the moving party contends there exists no genuine issue. The opposing party is required to file a response to the Statement of Material Facts admitting and/or denying each of the movant's assertions and may also include additional facts the non-movant contends are in dispute. Any facts set forth in the moving party's Statement of Material Facts that are not controverted in the response are deemed admitted. See N.D.N.Y.L.R. 7.1(c)(3).

Failure to respond to a motion for summary judgment will result in the granting of that motion. See N.D.N.Y.L.R. 7.1(b)(3). For further reference, see Fed. R. Civ. P. 56; Local Rule 7.1.

**C. Local Rule 7.1 Motion Practice.** (Amended January 1, 1999)

**Introduction - Motion Dates and Times.**

Motions are returnable at a regularly scheduled motion date and time of the assigned judge, unless the Court directs otherwise. The moving party should select a return date accordingly, as set forth in subdivision (b). If the return date selected is not on a regularly scheduled motion date, or if no return date is selected, the clerk will set a proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form provided to the parties at the commencement of the litigation or may be obtained by calling the clerk's office.

**(a) Papers Required.**

Except as otherwise provided in this paragraph, all motions and opposition to motions

require a memorandum of law, supporting affidavit, and proof of service on all the parties, see L.R. 5.1(a). Additional requirements for specific types of motions, including cross motions, see L.R. 7.1(c), are set forth within this Rule.

**1. Memorandum of Law.**

No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless leave of the judge hearing the motion is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis, Juris, etc.) shall be accompanied by copies of the decisions.

When making a motion based upon a Rule or statute, the moving papers must specify the Rule or statute upon which the motion is predicated.

A memorandum of law is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
- (B) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
- (C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
- (D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
- (E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery.

**2. Affidavit.**

An affidavit must not contain legal arguments, but must contain factual and procedural background as appropriate for the motion being made.

An affidavit is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
- (B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
- (C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.

**3. Summary Judgment Motions.**

Any motion for summary judgment shall contain a Statement of Material



Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing party.

#### **4. Motions to Amend or Supplement Pleadings, or for Joinder or Interpleader.**

An unsigned copy of the proposed amended pleading must be attached to a motion brought under Fed. R. Civ. P. 14, 15, 19-22. Except as provided by leave of Court, the proposed amended pleading must be a complete pleading which will supersede the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading.

Where leave to supplement a pleading is sought under Fed. R. Civ. P. 15(d), the proposed supplemental pleading must be limited to acts that occurred subsequent to the filing of the original complaint. The paragraphs in the proposed pleading must be numbered consecutively to the paragraphs contained in the pleading that is to be supplemented.

**Caveat:** The granting of the motion does not constitute the filing of the pleading. After leave is given, the moving party must file and serve the original signed pleading.

(b) Motions.

**1. Dispositive Motions.**

[THE FULL TEXT OF L.R.7.1(b)(1) IS OMITTED. **NOTE:** PRO SE AND PRISONER CASES ARE EXEMPT FROM L.R. 7.1(b)(1).]

**2. Non-Dispositive Motions and Motions Exempt from 7.1(b)(1).**

All motion papers not prepared pursuant to Local Rule 7.1(b)(1) (that is, non-dispositive motions and those motions specifically exempted from 7.1(b)(1)) must be filed with the Court and served upon the other parties not less than **TWENTY-EIGHT CALENDAR DAYS** prior to the return date of the motion. The Notice of Motion should state the return date which has been selected by the moving party. See L.R. 7.1(a). Opposing papers must be filed with the Court and served upon the other parties not less than **FOURTEEN CALENDAR DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of Court, upon a showing of necessity. If leave is granted, reply papers must be filed with the Court and served upon the other parties not less than **SEVEN CALENDAR DAYS** prior to the return date of the motion.

All original motion papers shall be filed in the clerk's office designated on the case assignment form provided to the parties at the commencement of the litigation.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless specifically requested to do so by that judge.

**3. Failure To Timely File or Comply.**

Any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule shall not be considered unless good cause is shown. Failure to file or serve any papers as required by this Rule shall be deemed by the Court as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. Notice should be provided at the earliest practicable date, but in any event no less than **SEVEN CALENDAR DAYS** prior to the scheduled return

date of the motion, unless for good cause shown. **Failure to comply with this Rule may result in the imposition of sanctions by the Court.**

**(c) Cross-Motions.**

**1. Motions under 7.1(b)(1).**

A cross-motion may be served at the time opposition papers to the original motion are served, under the time provisions of 7.1(b)(1)(B). The original and one copy of the cross-motion/opposition papers must be served on the original moving party, and one copy must be served upon all other parties. If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed 25 pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed 25 pages in length, exclusive of exhibits. The reply/opposition papers must be served on the opposing party within **FOURTEEN CALENDAR DAYS** from the date on which the opposition papers were served by the opposing party, unless the parties agree otherwise.

The cross-moving party may reply in further support of the cross-motion with a reply brief that does not exceed 10 pages in length, exclusive of exhibits, under the time provisions of 7.1(b)(1)(C). The original and one copy of the reply must be served upon the original moving party, and one copy must be served on all other parties.

Page lengths may not be exceeded except with prior permission of the judge hearing the motion.

**2. Motions under 7.1(b)(2).**

A party opposing a motion may also file and serve a cross-motion with its opposition papers. However, a dispositive motion which would be filed under 7.1(b)(1) must not be filed as a cross-motion to a motion filed under 7.1(b)(2). A cross-motion is returnable on the same date as the original motion. The original moving party must file and serve on the other parties a response to the cross-motion not less than **SEVEN CALENDAR DAYS** prior to the scheduled return date.

**(d) Discovery Motions.**

The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking Court intervention.
2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.
3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a Court conference with the assigned magistrate judge. The assigned magistrate judge may direct the party making the request for a Court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing attorney and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the item should be allowed or disallowed.
4. Following a request for a discovery conference, the Court may schedule a conference and advise all attorneys of a date and time. The discovery conference may be conducted by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance, as directed by the assigned judge.
5. Following a discovery conference, the Court may direct the prevailing party to submit a proposed order, on notice to the opposing party.
6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, at the discretion of the Court the resisting party will be subject to the sanction of the imposition of costs, including the attorney's fees of opposing counsel in accordance with Fed. R. Civ. P. 37.
7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the privilege claimed. No generalized claims of privilege may be made.

8. Motions to compel discovery may be filed no later than **THIRTY CALENDAR DAYS** after the discovery cut-off date. See L.R. 16.2.

**(e) Order to Show Cause.**

In addition to a memorandum of law and supporting affidavit, an Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. Reasonable advance notice of the application for an Order to Show Cause must be given to the other parties.

An Order to Show Cause must contain a space for the assigned judge to set forth the: (a) deadline for supporting papers to be filed and served, (b) deadline for opposing papers to be filed and served, and (c) the date and time for the hearing.

**(f) Temporary Restraining Order.**

A temporary restraining order may be sought by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. Any application for a temporary restraining order must be served on all other parties unless otherwise permitted by Fed. R. Civ. P. 65.

**(g) Motion for Reconsideration.**

Motions for reconsideration or reargument, unless otherwise governed by Fed. R. Civ. P. 60, may be served not later than **TEN CALENDAR DAYS** after the entry of the challenged judgment, order, or decree. The papers supporting and opposing the motion must be filed pursuant to the time schedule set forth in Local Rule 7.1(b)(2). A memorandum of law concisely setting forth the basis for the motion is required. See L.R. 7.1(a). Motions for reconsideration or reargument will be decided on submission of the papers, without oral argument, unless the Court directs otherwise.

**(h) Oral Argument.**

On all motions made to a district Court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the discretion of the district Court judge, or on consideration of a request of any party, a motion returnable before a district Court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the Court sua sponte directs or grants the request of any party for oral argument.

**(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.**

A party who presents vexatious or frivolous motion papers, or fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorney's fees to opposing counsel.

**(j) Adjournments.**

Adjournment of motions is in the discretion of the Court. Any party seeking an adjournment from the Court must first contact the opposing party. No motion under this Rule will be adjourned more than two times unless the party seeking the adjournment has satisfied the Court that a further adjournment is necessary. In no event shall an adjournment last longer than four months. The party requesting the adjournment is responsible for renoticing the motion. Any motion not renoticed within four months from the initial adjournment will be deemed withdrawn.